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IN THE  
**Supreme Court of the United States**

January Term, 1941

No. 639 ✓

IN THE MATTER OF:

PENNSYLVANIA CENTRAL BREWING CO.,  
Bankrupt.

JOHN STERN, ET AL., COMMITTEE OF WAGE EARNERS  
OF DEBTOR, PETITIONERS.

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF AP-  
PEALS FOR THE THIRD CIRCUIT AND BRIEF  
IN SUPPORT THEREOF**

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Act of July 1, 1898, c 541, Sec. 67, 30 Stat. 564;	
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IN THE  
SUPREME COURT OF THE UNITED STATES

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January Term, 1941

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No. ....

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IN THE MATTER OF PENNSYLVANIA CENTRAL BREWING COM-  
PANY, BANKRUPT

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*John Stern, et al., Committee of Wage Earners of Debtor,*  
*Petitioners.*

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**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE THIRD CIRCUIT AND BRIEF IN SUPPORT  
THEREOF**

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*To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the United States:*

John Stern, et al., a Committee of Wage Earners of the Debtor Corporation, the Bankrupt, respectfully prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Third Circuit entered in the above case on September 20, 1940, reversing the judgment of the District Court of the United States for the Middle District of Pennsylvania:

**SUMMARY STATEMENT OF MATTERS INVOLVED**

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The petition under Chapter 77 b of the Bankruptcy Act was filed by the debtor corporation, the Pennsylvania Central Brewing Company, on December 18, 1934.

At that time seventy-eight wage earners were owed wages extending back in most cases more than six months. These truck drivers, brewery workers and office employees had been going without their regular pay in an effort to re-establish the Pennsylvania Central Brewing Co. as a successful beer manufacturer and distributor. At the outset of the Federal court proceedings, they were assured by the Court that their claims would be protected under the Bankruptcy Act.

The Third Circuit Court subsequently decided that certain personal property was subject to the lien of a \$750,000 mortgage on the business enterprise. *Fidelity Philadelphia Trust Company v. Weaver, et al.* (C. C. A. 3) 98 F (2) 471.

None of the seventy-eight wage claimants have ever received a cent on their claims from the Bankruptcy Court, or otherwise, since December 18, 1934.

On April 10, 1939, the District Court confirmed the sale of certain real and personal property of the bankrupt. Among the parcels was the Reichard and Weaver brewery in Wilkes-Barre, assessed at over \$78,000 by Luzerne County, a municipal corporation of the Commonwealth of Pennsylvania. The purchaser of the said property was Luzerne County for a price of \$16,000. Luzerne County was one of the appellants in the Circuit Court of Appeals, claiming \$6,141.27 as a lien on the property they now own. The City of Wilkes-Barre, a municipal corporation within

Luzerne County, joined in that appeal and claims \$8,808.23 as a lien on said property.

The total proceeds handled in any and all capacities by the Trustees in Bankruptcy in this case have been \$155,824.13, of which only \$48,181.35 is available in concluding the distribution of the estate. Tax claims filed with the Special Master total \$161,936.11. The first mortgage of record exceeds \$736,000.00.

The Special Master ordered distribution of the fund to satisfy administration costs and the claims of wages earned within three months of December 18, 1934, and not exceeding \$600.00 to any one claimant, totalling \$23,559.79. This order of distribution was affirmed by the District Court, on January 22, 1940. Exceptions were filed by the municipal taxing authorities to this order of distribution and notice of appeal with supersedeas filed on February 9, 1940.

The case was heard by the Circuit Court of Appeals for the Third Circuit before Biggs, Jones and Goodrich, Circuit Judges, and in an opinion (Biggs, Circuit Judge) filed September 20, 1940, at No. 7329 October Term 1939, the order of the Court below was reversed, the opinion finding that the two new Sections 67 (b) and (c) of the Bankruptcy Act of June 22, 1938 [11 U. S. C. 107 (b) and (c)] were only "comparatively slight rearrangements" and do "not operate to postpone the payment of statutory liens to general expenses of administration and the wage claims."

**QUESTIONS PRESENTED**

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1. Are not Sections 64 (a), 67 (b) and 67 (c) of the Bankruptcy Act of June 22, 1938, [11 U. S. C. 104 (a), 107 (b), e-(c)], an expression of Federal law, evidencing the intention of the Congress in furtherance of public policy to subordinate statutory liens (here, of taxes) on real estate to the prior payment of administration expenses of the bankruptcy proceedings and the claims of laborers?

2. Where there are equal statutory liens, should not a bankruptcy court invoke equitable principles in marshalling the liens to prevent full payment of the one to the exclusion of the other?



## **REASONS RELIED ON FOR ALLOWANCE OF WRIT**

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The Questions thus presented have never been decided by this Court. As they require interpretation of two new sections of the new Bankruptcy Act of Congress of June 22, 1938, namely Sections 67 (b) and 67 (c) [11 U. S. C. 107 (b) and 107 (c)] and as their determination in this case has grave effect upon wage claimants throughout the Country and therefore affects the public economy, they are questions of national importance that should be definitely settled by an expression from your Honorable Court.

The decision of the Circuit Court of Appeals in this case is destructive of the evident intention of the Congress in passing these new provisions in the law of bankruptcy to effect a purpose in furtherance of public policy, as well as the public economy, of preventing the marshalling of the entire assets of a bankrupt for the payment of tax liens to the exclusion of the necessary costs and expenses of the bankruptcy proceeding *and the wages of laborers*.

Wherefore, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Third Circuit, commanding that Court to certify and send to this Court, for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in this case; that said decree of the Circuit Court of Appeals for the Third Circuit may be reversed; and that your petitioner may have such other and further relief in the premises as to your Honorable Court may seem meet and just.

And your petitioners will ever pray.

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Dated December 19, 1940.

Scranton, Pennsylvania.

